

Article - Natural Resources

§3-103.

(a) There is a body politic and corporate known as the “Maryland Environmental Service”. The Service is an instrumentality of the State and a public corporation by that name, style, and title, and the exercise by the Service of the powers conferred by this subtitle is the performance of an essential governmental function of the State.

(b) (1) There are four officers of the Service: a Director, a Deputy Director, a Secretary, and a Treasurer. The four officers of the Service shall be appointed as follows:

(i) The Director shall be appointed by the Governor, with the advice and consent of the Senate solely with regard to the qualifications for the duties of the office. The Director serves at the pleasure of the Board with the concurrence of the Governor and shall receive such compensation as may be determined by the Board; and

(ii) The Deputy Director, the Secretary and the Treasurer shall be appointed by the Director with the approval of the Governor solely with regard to the qualifications for the duties of the office. The Deputy Director, the Secretary and the Treasurer serve at the pleasure of the Director and shall receive such compensation as may be determined by the Board.

(2) The Board of Directors of the Service shall consist of nine members as follows:

(i) The Director, Deputy Director, Secretary, and Treasurer of the Service;

(ii) Three members from the public sector in the State in positions responsible for water, wastewater, or solid waste management; and

(iii) Two members from the private sector in the State with technical, financial, development, or legal experience related to water, wastewater, or solid waste management.

(3) The public sector and private sector members of the Board, as set forth in paragraph (2)(ii) and (iii) of this subsection shall be appointed by the Governor with the advice and consent of the Senate.

(4) Six members constitute a quorum for the transaction of business of the Board. The affirmative vote of at least five members is necessary for any action taken by the Board.

(5) Those members of the Board not already holding a public office shall receive from the Service:

(i) Per diem compensation as established by the Board; and

(ii) Reimbursement for expenses under Standard State Travel Regulations.

(6) The term of a member who is not an officer of the Service is 4 years.

(7) The terms of members who are not officers of the Service are staggered as required by the terms provided for those members of the Board on July 1, 1993.

(8) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(9) A member who is appointed after a term has begun serves only the remainder of that term and until a successor is appointed and qualifies.

(c) (1) The Director is both the administrative head of the Service and the presiding officer of the Board. The Director is directly responsible to the Board and shall advise the Board on all matters assigned to the Service. The Director shall carry out the Board's policies related to the Service. He is responsible for the exercise of all powers and duties conferred upon the Service by the provisions of this subtitle except for those powers and duties specifically conferred by this subtitle on the Secretary, Treasurer, or Board.

(2) The Deputy Director shall have the duties provided by law or delegated by the Director.

(d) (1) The Secretary shall keep a record of the proceedings of the Board and be custodian of all books, documents, and papers filed with the Service and of the minute book or journal of the Service and its official seal. He may have copies made of all minutes, records, and documents of the Service and certify them to be true copies under the official seal of the Service. Any person dealing with the Service may rely upon these certificates, and certified copies shall be received as evidence in any court or other tribunal in the State, in the same manner and with the same effect as if the original books, papers, entries, records, or proceedings could be produced.

(2) The Secretary, with the approval of the Board, may delegate to the Deputy Director, during an absence of the Secretary, any duty enumerated in paragraph (1) of this subsection.

(e) (1) The Treasurer shall develop and maintain a detailed and accurate accounting system for all financial transactions of the Service, and he shall perform other duties relating to the financial affairs of the Service as required by law or by a directive of the Board. Unless any money of the Service is otherwise held by or payable to a trustee appointed pursuant to a resolution authorizing the issuance of bonds or notes or under a trust agreement securing the bonds or notes, the Treasurer shall receive money of the Service until otherwise prescribed by law, he shall deposit the money as soon as it is received to the credit of the Service in any financial institution

in which the State Treasurer is authorized to deposit State funds. He shall disburse money for the purposes of the Service according to law, only upon his warrant. He shall make arrangements for the payment of the interest on and principal of the Service debt. Upon entering the performance of his duties, the Treasurer shall be covered by a surety bond in accordance with the provisions of law concerning the State Employees Surety Bond Committee.

(2) With the approval of the Board, the Treasurer may authorize an employee of the Service to serve as his deputy and to disburse money for the purposes of the Service as provided by law, and subject to restrictions and other conditions that the Treasurer establishes. The Deputy Treasurer shall be covered by a surety bond in accordance with the provisions of law concerning the State Employees Surety Bond Committee.

(f) The Attorney General of Maryland shall be the legal advisor for the Service and the Board. He shall enforce compliance with the requirements of this subtitle through any appropriate legal remedy and prosecute violations in accordance with the provisions of this subtitle. The Attorney General shall assign to the Service the number of assistant Attorneys General and other staff requested by the Service. One of the assistant Attorneys General shall be designated by the Attorney General as counsel to the Service. The counsel to the Service shall have no other duty than to render, subject to the discretion and control of the Attorney General, the legal aid, advice, and counsel required by the Director, the Board, and the other officials of the Service and, also subject to the discretion and control of the Attorney General, to supervise the other assistant Attorneys General assigned to the Service. The counsel and every other assistant Attorney General assigned to the Service shall be practicing lawyers of this State in good standing and shall be entitled to a salary from the funds of the Service. After the Attorney General has designated an assistant Attorney General to serve as counsel to the Service, the Attorney General may not reassign the counsel without consulting with the Director and the Board. With the approval of the Attorney General, the Service may employ additional counsel that it considers necessary to carry out the provisions of this subtitle.

(g) (1) The Service is exempt from the provisions of Subtitles 3, 4, 5, and 7 of Title 4 of the State Finance and Procurement Article.

(2) The Service is exempt from the provisions of Division II of the State Finance and Procurement Article, but is not exempt from Subtitle 3 of Title 14, Subtitle 4 of Title 12, Title 16, and Title 17 of the State Finance and Procurement Article.

(3) (i) Except as otherwise provided in this paragraph, all procurements by the Service for materials, equipment, services, or supplies performed or furnished in connection with the planning, development, design, equipping, construction, or operation of any project owned or controlled by the Service, shall be awarded in accordance with rules and regulations adopted pursuant to the Administrative Procedure Act.

(ii) The Service may procure materials, equipment, services, or supplies by utilizing:

1. Competitive sealed bids;
2. Competitive sealed proposals;
3. Sole source procurement;
4. Intergovernmental cooperative purchasing agreements;
5. A small procurement process, if the procurement is estimated by the Service to result in an expenditure of \$25,000 or less; or
6. An emergency procurement process, if the procurement is necessary to avoid or to mitigate serious damage to public health, safety, or welfare.

(4) The Service may adopt rules and regulations to provide a process to resolve disputes between the Service and its contractors, that may include alternative dispute resolution by the parties to the dispute.

(h) (1) The Service:

(i) May create and establish 1 or more project reserve funds in such amounts as the Board considers appropriate, including the following project reserve funds:

1. An Eastern Correctional Institution Steam Turbine Contingency Fund;
2. A Department of Natural Resources Project Contingency Fund; and
3. A Reimbursable Project Contingency Fund; and

(ii) Subject to paragraph (2) of this subsection, may pay into such funds:

1. Any moneys appropriated and made available by the State for the purposes of such funds;
2. Any proceeds from the sale of bonds or notes, to the extent provided in the resolution authorizing the issuance of the bonds or notes;
3. Revenues derived from a project of the Service; and
4. Any other moneys which may be received by or otherwise made available to the Service from any other source or sources which the Service has designated for deposit into such funds.

(2) Moneys held in or credited to a project reserve fund established under this subsection shall be used solely to accomplish the purposes of this subtitle, as determined by the Board and, subject to paragraph (3) of this subsection, may be retained by the Service in the appropriate project reserve fund based on the project for which the money was received by the Service.

(3) (i) The Service may credit to a project reserve fund established under paragraph (1)(i)1 through 3 of this subsection only moneys that are reimbursable to the State.

(ii) The Service may not retain more than:

1. \$1,500,000 in the Eastern Correctional Institution Turbine Project Contingency Fund;

2. \$500,000 in the Department of Natural Resources Project Contingency Fund; or

3. \$1,000,000 in the Reimbursable Project Contingency Fund.

(iii) If at the end of a fiscal year the balance in a project reserve fund exceeds the limits stated in subparagraph (ii) of this paragraph, the Service shall revert the excess to the State fund from which the moneys in the project reserve fund were originally appropriated.

(4) Moneys appropriated or made available to the Service by the State shall be expended in accordance with the provisions of this subtitle.

(i) The Service shall submit annually a budget reflecting the operating and capital program of the Service to the Department of Budget and Management for inclusion for informational purposes in the State budget book.